

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. ... **76-160**

MEDLIN MARINE, INCORPORATED,
Petitioner,

VS.

**MRS. ALANA G. HEIMAN, in Her Own Right; SANDRA JEAN HEIMAN, by
MRS. ALANA G. HEIMAN, Her Mother and Next Friend; and H. MAURICE
MITCHELL and JOSEPH W. GELZINE, Co-Administrators in Succession
With Will Annexed of the Estate of Max Heiman, Deceased, and
MARINE DEVELOPMENT CORPORATION,**
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals
for the Eighth Circuit

**BRIEF FOR MEDLIN MARINE, INCORPORATED,
IN OPPOSITION**

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OPINIONS BELOW

The per curiam order of the Court of Appeals, not yet reported, appears in Appendix B of Petitioner's Petition for a Writ of Certiorari. The Panel Opinion of the Court of Appeals, not reported, appears in Appendix F of Petitioner's Brief. The Supplemental Memorandum Opinion of the District Court appears

in Petitioner's Appendix G. The Memorandum Opinion of the District Court filed of record on March 7, 1975, appears in Petitioner's Appendix I. The District Court's Findings of Fact appear in Petitioner's Appendix J.

JURISDICTION

The Judgment of the Court of Appeals, was entered on May 14, 1976. A timely Petition for Rehearing was denied on May 7, 1976, and Petitioner's Petition for a Writ of Certiorari was filed within ninety (90) days of that time. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the Eighth Circuit Court of Appeals properly held that Marine Development, Inc. had a duty to warn Boatel and the Heimans, that its air conditioning system could be installed in the Heiman yacht in such a way as to draw from the engine compartment.

STATEMENT

This is an admiralty case brought pursuant to Rule 9 (h) of the Federal Rules of Civil Procedure by the Estate of Max Heiman, Deceased, Mrs. Alana Heiman and Sandra Heiman against Boatel, the manufacturer of the boat; Kohler, the manufacturer of a gasoline powered generator on the boat; Marine Development, Inc., the manufacturer of an air conditioning unit on the boat; and the respondent, Medlin Marine, Inc., the retailer of the boat.¹

¹ The Respondent in this action, Medlin Marine, Inc., has petitioned this Court for a Writ of Certiorari requesting that this Court review the decision of the lower court in refusing to grant it indemnity from Marine Development, Inc., and in allowing the addition of an inflation factor to the award for loss of contributions.

The evidence showed that carbon monoxide gas was created by the burning of a gasoline powered generator built by Kohler Corporation. The design of the craft called for the gas to be exhausted at the stern of the boat just below the waterline. Immediately over the exhaust outlet, there was an overhang with four water drainage holes in the bottom of it. The holes were concealed so as not to be visible when the boat was in the water. Since there was a vacuum in the engine compartment caused by the generator's need for air, the exhaust fumes were sucked through the four holes back into the engine compartment.

Between the engine compartment and the living quarters of the boat there was a non-airtight wall. Without the air conditioning operating, there would be a slight draw of air from the living quarters to the engine compartment due to the vacuum created by the generator. Thus, although potential for danger existed, real danger was not present until the flow of air was reversed.

The return air of the air conditioning equipment proved to be the agent for reversal and it was installed by Boatel near a passage that led to the engine compartment.

Marine Development Corporation, according to the findings of the Court, did not know that its equipment could be installed in such a way as to draw from the engine compartment and, therefore, gave no warning of this danger.

The Court concluded that Boatel, Inc., the manufacturer of the boat, was negligent and liable to the plaintiffs in strict liability. Marine Development, the air conditioning manufacturer, was found negligent for failure to warn and liable in strict liability. Medlin Marine, as seller of the boat to Heiman, was found liable in strict liability and implied warranty. Kohler was found not to be liable. As between Boatel and Marine Development, the Court assessed fault as follows: Boatel 80%; Marine

Development 20%. Medlin was given judgment for indemnity against Boatel. In a Supplemental Opinion the Court denied Medlin's claim for indemnity against Marine Development holding instead that Medlin and Marine Development were equally at fault.

ARGUMENT

Respondent respectfully submits that petitioner's petition for a writ of certiorari should be denied for the reason that the lower court decision regarding the liability of Marine Development Corporation was based on the application of accepted tort principles to the facts of this case.

The Petitioner misinterprets the reasoning of the lower Court in assessing liability against it. The Trial Judge found that Marine Development knew, or should have known, that its air conditioning unit could be installed in such a way as to draw air from the engine compartment. In addition, the Court found that Marine Development knew that the engine compartment on the Heiman yacht was not airtight. The Court concluded that all parties knew, or should have known, that during the life of the yacht the exhaust system could, and probably would, malfunction causing carbon monoxide to enter the engine compartment. Based on those findings the Court found that Marine Development had a duty to warn Boatel and the Heimans that its air conditioning system could be installed in such a way as to draw from the engine compartment.

In the instant case, carbon monoxide did not enter the engine compartment from a faulty exhaust system, nevertheless, carbon monoxide did, in fact, get into the engine compartment and from there it was drawn into the living quarters of the yacht by Marine's air conditioning system.

The law in the United States is that where the results of the defendant's negligence are foreseeable the fact that the result is brought about by a source not foreseen does not change his duty, nor his liability for the resulting injuries. The landmark case of *Johnson v. Kosmos Portland Cement*, 64 F.2d 193, 6th Cir. 1933, is directly in point. In that case the defendant failed to clean the residue out of an oil barge leaving it full of explo-

sive gas. A fire and explosion occurred when the barge was struck by lightning. In holding that, although the lightning was not foreseeable, the defendant's negligence was the cause of the resulting injuries and damages, the Sixth Circuit stated:

"We think the true rule to be that when the thing done produces immediate danger of injury, and is a substantial factor in bringing it about, it is not necessary that the author of it should have had in mind the particular means by which the potential force he has created might be vitalized into injury."

The present case presents basically the same situation. Marine, by failing to warn Boatel and the Heimans that its air conditioning system could be installed in such a way as to draw air from the engine compartment, created a dangerous situation. With the knowledge that the Trial Court found Marine had, or should have had, that carbon monoxide could get into the engine compartment and that Marine's air conditioning could be installed in such a way as to draw air from the engine compartment, Marine had a duty to warn of that danger. What was foreseeable from its failure to warn, that is, carbon monoxide getting into the engine compartment and being drawn into the living quarters, is exactly what happened. The fact that the carbon monoxide came from the portholes in the transom, other than a faulty exhaust, should not and does not alter Marine's responsibility for negligently failing to warn of the danger. The noted authority, Dean Prosser, in his handbook on Torts states the rule thusly:

"* * * if the result is foreseeable, the manner in which it is brought about need not be, and is immaterial."

In the instant case the fact that the carbon monoxide got into the engine compartment from an unexpected source does not change Marine's duty to warn nor its responsibility for the breach of that duty.

Marine next argues that it had no duty to warn because the danger of installing the air conditioning system as it was installed in the present case was an obvious danger. This argument completely ignores the evidence in the case. The Trial Court, sitting as a fact finder, after hearing all of the evidence, made the following findings of fact from the bench:

The Court has already found that Marine did not [1783] really understand and appreciate the effect of the improper location of its units in terms of the hazard to life and health involved, although it did understand the effects of such improper location upon the efficient operation of its cooling and heating equipment.

The Court finds and concludes that defendant, Marine Development Corporation, should have known of the hazard to life and health posed by the improper installation of its equipment; and, therefore, that it should have warned Boatel in a clear and unequivocal way concerning same.

A manufacturer must know the nature and propensities of its products and warn of dangers created by that nature and those propensities. In this connection a distinction must be drawn between the duty to give adequate instructions and directions for the use or installation of a product, on the one hand, and the duty to warn of potential hazards which might result from deviations from such directions or instructions, on the other hand.

Here Marine did not know the hazards and, therefore, did not warn against them. Its instructions requiring that the cooling unit be located in the space to be cooled or heated and that such units should be installed so that there would be an adequate path for the air to circulate freely into the units from the space being cooled and then from the units back to the space being cooled were obviously and clearly [1784] directed toward the objective of the efficient utilization of the equipment for heating and cooling.

In the eyes of Marine Development Corporation the improper installation of a cooling unit in a space other than that to be cooled would greatly interfere with the efficient operation of the equipment. That it might also act as a pump to draw any carbon monoxide which might be in the engine compartment was not known or considered by Marine prior to the investigation of this tragedy. (Pages 1461-1462).

Marine did not know of the danger involved in installing its air conditioning system in the manner it was installed in the present case, yet they now argue that the danger was obvious. Marine's position in this regard is similar to that of the defendants in the case of *Borel v. Fibreboard Paper Products Corporation*, 493 F.2d 1976 (5th Cir. 1973). In that case plaintiff was seriously injured as a result of working with asbestos over a long period of time. The defendants argued on the one hand that danger from working with asbestos was not known to them within a certain time frame and the danger to the plaintiff was unforeseeable. As a second argument, they contended that the danger was obvious to the plaintiff. In dealing with this position, the Court stated:

"As previously mentioned, the foreseeability of the danger must be measured in light of the manufacturer's status as an expert and the manufacturer's duty to test its product. In these circumstances, we think the jury was entitled to find that the danger to Borel and other insulation workers from inhaling asbestos dust was foreseeable to the defendant at the time the products causing Borel's injuries were sold. * * *. Here, the defendants gave no warning at all. They attempt to circumvent this finding by arguing, disingenuously, that the danger was obvious."

Referring to the defendant's argument as anomalous, the Court easily concluded that the evidence on obviousness was not "so compelling that reasonable and fairminded persons would have

concluded that Borel discovered the defect and was aware of the danger, and nevertheless proceeded unreasonably to make use of the product.

The Trial Court found that both Boatel and Marine were ignorant of the potential dangers involved in the air conditioning system. That ignorance does not relieve Marine of its liability for failing to warn of the dangers involved in the installation of its air conditioning system. Marine had a duty to know the propensities of its air conditioning system. In *Tucson Industries, Inc. v. Schwartz*, 108 Ariz. 464, 501 P.2d 936 (1972), the Court stated:

"The maker of an article for sale or use by others must use reasonable care and skill in designing it and providing specifications for it so that it is reasonably safe for the processes for which it is intended and for uses which are foreseeable probably [sic]. A person who undertakes such manufacturing will be held to the skill of an expert in that business and to an expert's knowledge of the art, materials and processes. Thus he must keep reasonably abreast of scientific knowledge and discoveries touching his product and the techniques and devices used by practical men in his trade. He may also be required to make tests to determine the propensities and dangers of his product."

Marine was woefully short of complying with the above rule. Being ignorant of the propensities and potential dangers of its product, it is hardly in a position to avoid liability on the grounds that such dangers were obvious to others.

Marine, throughout its brief, argues that it had no duty to warn because it was merely a component part manufacturer. We do not understand the comfort which that argument seems to give Marine. Component part manufacturers are held to the same duty of care as manufacturers of other articles for sale. They are required to use ordinary care in the manufacture and

sale of their products. It is clear from the cases that component part manufacturers, just like manufacturers of completed products, must use ordinary care and may be held liable in negligence or strict liability when they breach their duty of care. See *Barth v. B. F. Goodrich Tire Company*, 61 Cal. Rptr. 306; *Suvada v. White Motor Company*, 210 N.E.2d 182 (Ill. 1965); *Burbage v. Boiler Engineering and Supply Company*, 433 Pa. 319, 249 A.2d 563; *Tromza v. Tecumseh Products Co.*, 378 F.2d 601, 605-06, 3rd Cir. (1967); *Texaco v. McGrew Lumber Company*, 254 N.E.2d 854, 117 Ill. App. 2d 351 (1969).

Commenting that the old case of *McPherson v. Buick Motor Company* left open the question as to whether the component's part's manufacturer would be liable, *Frumer and Friedman, Products Liability*, §9.01 comments:

"There is no good reason why he shouldn't be. Subsequent New York decisions and the cases generally make it clear that the manufacturer of a component part is just as liable for defects in the part due to his negligence as any other manufacturer."

As to the liability of components' parts' manufacturer in strict liability cases, *Frumer and Friedman, Products Liability* §16A (4)(b)(i) states:

"The view expressed in connection with the warranty cases, that assembler and the manufacturer of the component parts should both be strictly liable in warranty, leaving the assembler to his remedy against the part manufacturer by the way of indemnity, is the same as that applied to the situation under discussion. The strict tort liability cases are in accord with the above view that the rule applies to the manufacturer of a component part."

The failure to warn duty is upon the component's part's manufacturer when he has, or should have, knowledge concerning the propensities of his product which the further processor or assembler may not have.

In the instant case, Marine was more than a mere component's part's manufacturer. The Trial Court made the following findings of fact:

"It is further clear from the evidence that Marine Development Corporation sells more than off-the-shelf products to its customers, whether those customers be the manufacturers of boats or its franchise dealers.

Marine, in fact, offers advice and assistance with respect to the design and installation of components which it manufactures.

"Based on the above, it is clear that Marine, with its superior knowledge and skill, had the duty to warn not only Boatel but the Heimans also that the air conditioning system that it manufactured could be installed in such a way as to draw from the engine compartment. That failure to warn proximately caused the death of Mr. Heiman.

CONCLUSION

Respondent respectfully submits that Marine Development's Petition for Certiorari should be denied for the reasons that under the law and the facts of this case Marine's liability was properly decided by the Trial Judge who heard the evidence.

Respectfully submitted,

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